

May 31, 2017

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Ex Parte Letter – 2016 Biennial Review of Telecommunications Regulations
Wireline Competition Bureau – WC Docket No. 16-132; Implementation of
the Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996 – CC Docket No. 96-128**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. d/b/a Claro (“PRTC”) submits this ex parte letter in support of petitions for waiver (“waiver petitions”) filed by Sprint¹ (“Sprint Petition”) and Cincinnati Bell Any Distance Inc. (“CBAD”) (“CBAD Petition”)² requesting a waiver of the annual Payphone Call Tracking System Audit requirement (“Audit Requirement”) required by section 64.1320 of the Federal Communications Commission’s (“Commission”) rules.³ PRTC further supports requests by USTelecom⁴ and ITTA – The Voice of America’s Broadband

¹ See Sprint Petition for Waiver, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Apr. 7, 2017) (*Sprint Petition*).

² See Cincinnati Bell Any Distance Inc. Petition for Waiver, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Apr. 25, 2017) *amended by* Letter from Karen Brinkmann, Counsel to CBAD, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Apr. 27, 2017 filed in CC Docket No. 96-128 (*CBAD Petition*).

³ 47 C.F.R. § 64.1320.

⁴ See USTelecom Ex Parte Letter, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996* (Apr. 21, 2017) (*USTelecom Ex Parte*).

Providers (“ITTA”)⁵ filed in response to the waiver petitions that the Commission extend blanket relief to all completing carriers covered by the Commission’s payphone compensation rules⁶ and that, in the interim, the Commission grant all covered completing carriers a temporary waiver until the Commission rules on the pending waiver petitions or completes its review of the continuing need for the Audit Requirement in the biennial review proceeding. PRTC’s experience implementing the annual audit has demonstrated that the compliance costs are now vastly disproportionate to the revenue being audited, as Sprint and others have noted.⁷ Accordingly, PRTC joins with those who have urged the Commission to waive the Audit Requirement for all affected carriers and to grant those carriers a temporary waiver until the waiver petitions are settled or the Commission completes its review of the continuing need for the audit in the biennial review proceeding.

PRTC endorses three key substantive points raised in the waiver petitions and supporting filings:

First, there has been a “dramatic decline”⁸ in the number and use of payphones. All parties have stressed that the reduction in the number and use of payphones over the last decade has been one of the main drivers behind the disproportionate costs now associated with the Audit Requirement relative to the sums being audited.⁹ At least in part, this reduction has been attributed to a corresponding uptick in the use of mobile phones.¹⁰ USTelecom notes that “[c]all volumes on payphones have dropped by 99.5 percent as consumers increasingly make calls with their own mobile devices rather than payphones.”¹¹ As the use of payphones has decreased so

⁵ See Comments of ITTA – The Voice of America’s Broadband Providers, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; 2016 Biennial Review of Telecommunications Regulations*, CC Docket No. 96-128, WC Docket No. 16-132 (May 5, 2017) (*ITTA Comments*).

⁶ See 47 C.F.R. § 64.1300 *et seq.*

⁷ See Comments of Sprint, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Dec. 5, 2016) (*Sprint Comments*); Reply Comments of Cincinnati Bell Any Distance, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Jan. 3, 2017) (*CBAD Reply Comments*); Cincinnati Bell Any Distance Inc. Notice of Ex Parte, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Apr. 4, 2016) (*CBAD Ex Parte*)

⁸ *Sprint Petition* at 2.

⁹ See *CBAD Ex Parte* at 1; *CBAD Petition* at 3; *CBAD Reply Comments* at 1; *Sprint Petition* at 2; *Sprint Comments* at 2; *USTelecom Ex Parte* at 2; *ITTA Comments* at 4.

¹⁰ See *e.g.*, *Sprint Comments* at 2; *CBAD Reply Comments* at 1.

¹¹ *USTelecom Ex Parte* at 2.

has the compensation due to payphone service providers.¹² While the amount of compensation due to payphone service providers has steadily declined with the corresponding decline in payphone usage, the costs associated with the Audit Requirement have remained “essentially fixed” and have “not materially changed.”¹³ PRTC’s experience confirms that the decline in the number and use of payphones now means there “is no association between the cost of the audit and the amount of payphone activity”¹⁴ such that the costs of the Audit Requirement now greatly exceed the compensation due to payphone service providers. This is not a sensible result given that the audits are designed to support the compensation due to payphone service providers and so should bear some relation to the revenues being audited.

Second, the market conditions for payphone services have changed significantly and have weakened the original justification for the Audit Requirement. Stakeholders have emphasized that market conditions have changed noticeably since the adoption of the Audit Requirement and other payphone compensation rules in 2003.¹⁵ PRTC agrees with commenters that these changes have eroded the original justification for the Audit Requirement which was to “prevent completing carriers from failing to pay payphone providers the requisite per-call compensation.”¹⁶ That rationale has become less salient as market conditions have shifted. PRTC agrees that, as a result of the change in market conditions, the “cost of maintaining the annual system audit rule now far outweighs any benefit that may have justified it initially.”¹⁷ As CBAD has pointed out, “it is no longer rational to expend what it costs to conduct the audit . . . for what is now an immaterial amount of compensation.”¹⁸

Third, the payphone compensation regime is well-established and protects the interests of payphone service providers. PRTC agrees that the compensation process “is well established and works smoothly” because it has been in place for decades.¹⁹ As CBAD notes, providers, including PRTC, use a clearinghouse to handle some or all of their compensation

¹² Sprint estimates that the amount of payphone compensation it has paid has declined approximately 99% between 2005 and 2016. *See Sprint Comments* at 2; *Sprint Petition* at 2. CBAD states that the amount of payphone compensation it pays has declined “by more than 97 percent from 2005 to 2016.” *See CBAD Reply Comments* at 1; *CBAD Petition* at 3.

¹³ *CBAD Petition* at 3; *accord Sprint Petition* at 2. CBAD has noted that that the costs of the Audit Requirement are both external—in retaining an independent auditor—and internal—in devoting the necessary internal resources to work with the independent auditor to complete the audit. *See CBAD Ex Parte* at 1.

¹⁴ *CBAD Petition* at 3.

¹⁵ *See generally In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, FCC 03-235, CC Docket No. 96-128, 18 FCC Rcd 19975 (rel. Oct. 3, 2003) (“*Payphone Compensation R&O*”).

¹⁶ *Sprint Comments* at 2.

¹⁷ *CBAD Reply Comments* at 2.

¹⁸ *CBAD Petition* at 4.

¹⁹ *CBAD Reply Comments* at 2.

obligations.²⁰ These clearinghouses have investigation and dispute resolution processes in place to address compensation-related disputes arising between the completing carrier and the payphone service provider.²¹ And as CBAD and ITTA noted, to the extent that compensation disputes arise the Commission retains authority to investigate complaints regarding a carrier's call tracking system or compensation to payphone service providers.²² Consequently, the well-established payphone compensation process ensures that payphone service providers are "fairly compensated" in accordance with the Communications Act.²³

PRTC submits that the foregoing arguments, among others offered by Sprint and CBAD, clearly demonstrate that there is "good cause"²⁴ to grant a waiver. As ITTA has noted, "waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest, and when evaluating a waiver request, the Commission must take into account considerations of hardship, equity, or more effective implementation of overall policy."²⁵ The continued imposition of the Audit Requirement imposes considerable hardship on covered completing carriers like Sprint and CBAD given the minimal revenues being audited.²⁶ By contrast, the implementation of deregulatory measures in this regard, given the expense of the annual audit, will reduce the expenses to carriers that are subject to the rules "which will ultimately result in cost savings to consumers, which is in the public interest."²⁷ These and other considerations addressed in the waiver petitions clearly demonstrate that a waiver is justified.

PRTC also fully supports and echoes the request of USTelecom and ITTA that any relief granted to Sprint and/or CBAD should be extended to all completing carriers.²⁸ On a more immediate basis and pending resolution of the waiver petitions or the completion of the Commission's review of the continuing need for the Audit Requirement in the biennial review proceeding, PRTC urges the Commission to grant a temporary waiver to all completing carriers so as to not burden those carriers with the expense of the Audit Requirement while the Commission considers this important issue.

²⁰ *CBAD Ex Parte* at 1.

²¹ *Id.*

²² *CBAD Petition* at 4; *accord ITTA Comments* at 3.

²³ 47 U.S.C. § 276 (requiring that all payphone service providers be "fairly compensated"); *Payphone Compensation R&O* ¶ 2.

²⁴ *See* 47 C.F.R. § 1.3.

²⁵ *ITTA Comments* at 4 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Small Business Exemption from Open Internet Enhanced Transparency Requirements*, Order, 32 FCC Rcd 1772, 1774, ¶ 6 (rel. Mar. 2, 2017)).

²⁶ *See, e.g., CBAD Petition* at 4. As CBAD notes "[it] makes no sense to spend \$5 to audit \$1 of compensation." *Id.*

²⁷ *USTelecom Ex Parte* at 2.

²⁸ *ITTA Comments* at 1; *USTelecom Ex Parte* at 1.

Please contact the undersigned should you have any questions or concerns.

Respectfully submitted,

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